STATE OF CALIFORNIA FISH AND GAME COMMISSION INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION (Pre-publication of Notice Statement)

Amend Subsection (b)(178) of Section 7.50, Title 14, CCR Re: Silver King Creek

I. Date of Initial Statement of Reasons: April 6, 2004

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: May 4, 2004

Location: San Diego

(b) Adoption Hearing: Date: August 6, 2004

Location: Bridgeport

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Current regulations prohibit fishing all year in Silver King Creek and tributaries including lakes above Llewellyn Falls. The current regulation is designed to protect the native Paiute cutthroat trout, which are listed as Threatened pursuant to the federal Endangered Species Act, by prohibiting angling in a portion of its existing range above Llewellyn Falls. Current trout fishing regulations for Silver King Creek and tributaries downstream of Llewellyn Falls provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling has been permitted downstream of Llewellyn Falls where nonnative trout exist.

The Department has proposed a Paiute cutthroat trout restoration project that involves removal of nonnative trout in the stream reach downstream of Llewellyn Falls to Snodgrass Creek. This stream reach constitutes the native range of Paiute cutthroat trout, one of the rarest trout subspecies. The proposed action is identified as one of the recovery criteria in the draft Recovery Plan for Paiute Cutthroat Trout, which is in review by the U.S. Fish and Wildlife Service. This project is supported by the U.S. Fish and Wildlife Service, U.S.D.A. Toiyabe National Forest, and Trout Unlimited. The Department's Heritage and Wild Trout Project views the proposed restoration reach as a potential Heritage Trout Water.

Associated with this project is the need to change angling regulations to inform the public, and protect Paiute cutthroat trout population recovery. During the restoration period (estimated to require several years), the Department is proposing to prohibit angling in the recovery reach and tributaries, between

Llewellyn Falls and Snodgrass Creek, to protect Paiute cutthroat trout and promote rebuilding of the population. Other existing portions of the watershed currently closed to angling would remain closed.

It is anticipated that when the fish population is restored, the Department will recommend to the Commission that the recovered fishery be considered as a designated Heritage Trout water.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, and 315, Fish and Game Code.

Reference: Sections 200, 205, 206, 215, 220 and 315, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.
- (d) Identification of Reports or Documents Supporting Regulation Change:
 - U.S. Fish and Wildlife Service. 2003 Draft Revised Recovery Plan for the Paiute cutthroat trout (*Oncorhynchus clarki seleniris*). Portland, Oregon.
- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

- IV. Description of Reasonable Alternatives to Regulatory Action:
 - (a) Alternatives to Regulation Change: No alternatives were identified.
 - (b) No Change Alternative: The changes are necessary to safeguard the recovery of a federally threatened species.
 - (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.
- V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation affects a short stream reach in a remote wilderness area of northern California.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

Current regulations for Silver King Creek and tributaries downstream of Llewellyn Falls provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling is permitted downstream of Llewellyn Falls where nonnative trout exist and compete with native Paiute cutthroat trout.

The Department is proposing to prohibit angling in a planned restoration portion of Silver King Creek between Llewellyn Falls and Snodgrass Creek. The Department is scheduled to implement a Paiute cutthroat trout restoration project in Silver King Creek downstream of Llewellyn Falls to Snodgrass Creek that will eliminate nonnative trout and benefit native Paiute cutthroat trout. The proposed angling closure will protect Paiute cutthroat trout and promote rebuilding of the population. Other existing portions of the watershed currently closed to angling would remain closed.